

Department of Justice

§ 65.83

other than magnitude, which may be considered in determining whether an immigration emergency exists include: the likelihood of continued growth in the magnitude of the influx; an apparent connection between the influx and increases in criminal activity; the actual or imminent imposition of unusual and overwhelming demands on law enforcement agencies; and other similar characteristics.

Other circumstances means a situation that, as determined by the Attorney General, requires the resources of a State or local government to ensure the proper administration of the immigration laws of the United States or to meet urgent demands arising from the presence of aliens in a State or local government's jurisdiction.

§ 65.82 Procedure for requesting a Presidential determination of an immigration emergency.

(a) The President may make a determination concerning the existence of an immigration emergency after review of a request from either the Attorney General of the United States or the chief executive of a State or local government. Such a request shall include a description of the facts believed to constitute an immigration emergency and the types of assistance needed to meet that emergency. Except when a request is made by the Attorney General, the requestor shall file the original application with the Office of the President and shall file copies of the application with the Attorney General and with the Commissioner of INS.

(b) If the President determines that an immigration emergency exists, the President shall certify that fact to the Judiciary Committees of the House of Representatives and of the Senate.

§ 65.83 Assistance required by the Attorney General.

The Attorney General may request assistance from a State or local government in the administration of the immigration laws of the United States or in meeting urgent demands where the need for assistance arises because of the presence of aliens in that State or local jurisdiction, and may provide funding to a State or local government relating to such assistance from the

Immigration Emergency Fund or other funding available for such purposes, without a Presidential determination of an immigration emergency, in any of the following circumstances:

(a) An INS district director certifies to the Commissioner of INS, who shall, in turn, certify to the Attorney General, that the number of asylum applications filed in that INS district during the relevant calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter. For purposes of this paragraph, providing parole at a point of entry in a district shall be deemed to constitute an application for asylum in the district.

(b) The Attorney General determines that there exist circumstances involving the administration of the immigration laws of the United States that endanger the lives, property, safety, or welfare of the residents of a State or locality.

(c) The Attorney General determines that there exist any other circumstances, as defined in § 65.81 of this subpart, such that it is appropriate to seek assistance from a State or local government in administering the immigration laws of the United States or in meeting urgent demands arising from the presence of aliens in a State or local jurisdiction.

(d)(1) If, in making a determination pursuant to paragraph (b) or (c) of this section, the Attorney General also determines that the situation involves an actual or imminent mass influx of aliens arriving off the coast or near a land border of the United States and presents urgent circumstances requiring an immediate Federal response, the Attorney General will formally declare that a mass influx of aliens is imminent or occurring. The determination that a mass influx of aliens is imminent or occurring will be based on the factors set forth in the definitions contained in § 65.81 of this subpart. The Attorney General will determine and define the time period that encompasses a mass influx of aliens by declaring when such an event begins and when it ends. The Attorney General will initially define the geographic boundaries where the mass influx of aliens is imminent or occurring.

(2) Based on evolving developments in the scope of the event, the Commissioner of the INS may, as necessary, amend and redefine the geographic area defined by the Attorney General to expand or decrease the boundaries. This authority shall not be further delegated.

(3) The Attorney General, pursuant to section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), may authorize any State or local law enforcement officer to perform or exercise any of the powers, privileges, or duties conferred or imposed by the Act, or regulations issued thereunder, upon officers or employees of the Service. Such authorization must be with the consent of the head of the department, agency, or establishment under whose jurisdiction the officer is serving.

(4) Authorization for State or local law enforcement officers to exercise Federal immigration law enforcement authority for transporting or guarding aliens in custody may be exercised as necessary beyond the defined geographic boundaries where the mass influx of aliens is imminent or occurring. Otherwise, Federal immigration law enforcement authority to be exercised by State or local law enforcement officers will be authorized only within the defined geographic boundaries where the mass influx of aliens is imminent or occurring.

(5) State or local law enforcement officers will be authorized to exercise Federal immigration law enforcement authority only during the time period prescribed by the Attorney General in conjunction with the initiation and termination of a declared mass influx of aliens.

[Order No. 1892-94, 59 FR 30522, June 14, 1994, as amended by Order No. 2601-2002, 67 FR 48360, July 24, 2002]

§ 65.84 Procedures for the Attorney General when seeking State or local assistance.

(a)(1) When the Attorney General determines to seek assistance from a State or local government under § 65.83 of this subpart, or when the President has determined that an immigration emergency exists, the Attorney General shall negotiate the terms and conditions of that assistance with the

State or local government. The Attorney General shall then execute a written agreement with appropriate State or local officials, which sets forth the terms and conditions of the assistance, including funding. Such written agreements can be reimbursement agreements, grants, or cooperative agreements.

(2) The Commissioner may execute written contingency agreements regarding assistance under § 65.83(d) of this subpart in advance of the Attorney General's determination pursuant to that section. However, such advance agreements shall not authorize State or local law enforcement officers to perform any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made the necessary determinations and authorizes such performance. Any such advance agreements shall contain precise activation procedures.

(3) Written agreements regarding assistance under § 65.83(d) of this subpart, including contingency agreements, shall include the following minimum requirements:

(i) A statement of the powers, privileges, or duties that State or local law enforcement officers will be authorized to exercise and the conditions under which they may be exercised;

(ii) A statement of the types of assistance by State or local law enforcement officers for which the Attorney General shall be responsible for reimbursing the relevant parties in accordance with the procedures set forth in paragraph (b) of this section;

(iii) A statement that the relevant State or local law enforcement officers are not authorized to exercise any functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until the Attorney General has made a determination pursuant to that section and authorizes such performance;

(iv) A requirement that State or local law enforcement officers cannot exercise any authorized functions of Service officers or employees under section 103(a)(8) of the INA, 8 U.S.C. 1103(a)(8), until they have successfully completed and been certified in a Service-prescribed course of instruction in